

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

Small Island Boutique Ltd.

Plaintiff

v.

Jade Marston

Defendant

Civil Action No. 4:24-cv-510

ORIGINAL COMPLAINT

Small Island Boutique Ltd. creates and sells unique jewelry with whimsical and innovative designs, and has customers around the globe. Under the brand of Silver Rain Silver, and over many years, Small Island developed a portfolio of more than 1,000 offerings — each one carefully crafted to appeal to its customers. This innovation breeds imitation, and Small Island is now faced with a defendant copying its creations and competing directly on the same marketplace of Etsy.com.

After filing a takedown notice in accordance with Etsy’s internal policies, Small Island received a counter notice under the Digital Millennium Copyright Act. Etsy made clear that Small Island only had one option: “Unless you notify us of a court action seeking a court order against the allegedly infringing member, the member may reactivate or repost the material specified in the counter notice in 10 business days, on 06 June, 2024.”

For this reason, and lacking other mechanisms to stop improper copying of its designs, Small Island now asserts a claim of copyright infringement against Jade Marston.

PARTIES

1. Plaintiff Small Island Boutique Ltd. is a limited liability company in the United Kingdom with a principal place of business at 41 Victoria Park Drive North, Glasgow G14 9NL United Kingdom.
2. Defendant Jade Marston is an individual with an address at 95 Spencer Street, Birmingham B18 6DA, United Kingdom.

JURISDICTION & VENUE

3. This is an action for copyright infringement arising under 17 U.S.C. § 501.
4. This Court has subject-matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is an action arising under the laws of the United States and relating to copyrights.
5. This Court has personal jurisdiction over Defendant because Defendant filed three counter notices under the Digital Millennium Copyright Act (“DMCA”). In these counter notices, pursuant to 17 U.S.C. 512(g)(3), Defendant agreed:

I consent to the jurisdiction of Federal Court for the judicial district in which I am located, or if my address is outside of the United States, for any judicial district in which Etsy is located, and that I will accept service of process from the person who provided the original notification or an agent of such person.

Exhibit 1.

6. This Court also has personal jurisdiction over Defendant because Small Island’s claims arise under federal law; the Defendant is, on information and belief, not subject to jurisdiction in any state’s courts of general jurisdiction; and exercise of such jurisdiction is consistent with the United States Constitution and laws. Fed. R. Civ. P. 4(k)(2).
7. Venue is proper in this District pursuant to 28 U.S.C. § 1391. Defendant is an individual subject to personal jurisdiction in this District, and defendants not residing in the United States may be sued in any judicial district.

SMALL ISLAND'S PRODUCTS & PROTECTIVE EFFORTS

8. Small Island is engaged in the business of designing, manufacturing, distributing, and retailing jewelry throughout the world, including on the Etsy platform.
9. Faced with a rise in knockoff products, Small Island has sought legal protection for its innovative designs. Accordingly, Small Island secured U.S. Copyright Registration numbers VA 2-392-222 (“Dairy Cow sculpture”), VA 2-392-213 (“Otter sculpture”), and VA 2-391-901 (“Robin earrings”), together referred to as the Registrations and attached as Exhibit 2.
10. On the platform of Etsy.com, Small Island identified three examples of infringement on its copyright-protected designs (“Designs”) being sold by Jade Marston under the store name SilverDrey. A comparison of these items is attached as Exhibit 3.
11. On May 23, 2024, after identifying these infringing listings, Small Island provided its Registrations to Etsy.com and filed three takedown notices, attached as Exhibit 4.
12. On May 24, 2024, Small Island received DMCA counter notices, attached as Exhibit 1, and was provided a deadline of June 6, 2024, by which to take court action. Despite efforts to resolve this matter, Small Island now has no option but to file suit.

COUNT ONE
COPYRIGHT INFRINGEMENT
(17 U.S.C. § 501)

13. Small Island realleges the allegations above as if fully set forth here.
14. Small Island’s Designs are copyrightable subject matter for which copyright protection exists under the Copyright Act, 17 U.S.C. § 101 *et seq.* Small Island is the exclusive owner of the Designs and of the Registrations.

15. Small Island has never assigned or licensed its Registrations or rights to the Designs to the Defendant.

16. On information and belief, Defendant has full knowledge of Small Island's ownership of the Designs, including Small Island's exclusive right to use and license such intellectual property.

17. On information and belief, the Defendant's infringing conduct was and continues to be willful and with full knowledge of Small Island's rights in the Designs, and has enabled the Defendant to improperly obtain profit.

18. By Defendant's infringing conduct, including her willful reproduction of the Designs, Defendant has directly infringed Small Island's exclusive rights under the Copyright Act.

19. As a direct and proximate result of the Defendant's infringing conduct, Small Island has been harmed and is entitled to recovery of damages against Defendant for Defendant's willful reproduction of the Designs.

20. Small Island is additionally entitled to recovery of its full costs and reasonable attorney's fees against the Defendant. 17 U.S.C. § 505.

REQUEST FOR RELIEF

Small Island therefore requests judgment against Defendant and in favor of Small Island as follows:

- A. Declaring that Defendant's reproduction of Small Island's Designs infringes Small Island's Registrations;
- B. Declaring that Defendant's conduct was knowing, intentional, and willful;
- C. Permanently enjoining Defendant and Defendant's successors, affiliates, servants, officers, agents, independent contractors, and employees, and anyone acting in active concert or participation with or at the behest or direction of any of the foregoing, from:
 - a. advertising, displaying, distributing, selling, manufacturing, delivering, shipping,

using, or enabling others to advertise, display, distribute, manufacture, deliver, ship, sell, or use any copies or derivative works based on Small Island's Designs, other colorable imitations of Small Island's Designs, or products and Designs that otherwise infringe on Small Island's Registrations;

- b. moving, relocating, or otherwise disposing of any funds currently located in Defendant's online accounts, including, without limitation, from Etsy.com;
- c. removing, destroying, or otherwise disposing of computer files, electronic files, business records, or documents relating to any of Defendant's webstores, websites, assets, operations, or relating in any way to the reproduction and display of the Designs; and
- d. engaging in any other activity that infringes on Small Island's rights in any manner.

- D. Ordering that all infringing products in Defendant's reasonable control be destroyed pursuant to 17 U.S.C. § 503(b);
- E. Ordering Defendant to, within ten days after service of judgment with notice of entry upon them, file with the Court and serve on Small Island a written report under oath setting forth in detail the manner in which Defendant has complied with all injunctive relief ordered by this Court;
- F. Awarding Small Island actual damages for willful infringement of the Registrations;
- G. Awarding Small Island recovery of its full costs and reasonable attorney's fees against the Defendant pursuant to 17 U.S.C. § 505;
- H. That this Court grant Small Island such other and further relief as it deems to be just and proper.

Dated: June 6, 2024

Respectfully submitted,

Scale LLP

By: /s/ James Creedon

James H. Creedon

Texas Bar No. 24092299

5473 Blair Road, Suite 100

Dallas, Texas 75231

Tel. 415.735.5933

Fax 415.573.0983

jcreedon@scalefirm.com

**ATTORNEY FOR PLAINTIFF
SMALL ISLAND BOUTIQUE LTD.**